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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,640	03/06/2002	Peter Manshausen	Mo-6803/BOR-3	9139
157	7590	07/14/2004	EXAMINER	
BAYER POLYMERS LLC 100 BAYER ROAD PITTSBURGH, PA 15205			NILAND, PATRICK DENNIS	
		ART UNIT	PAPER NUMBER	
		1714		

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/091,640	MANSHAUSEN ET AL.
Examiner	Art Unit	
Patrick D. Niland	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 5/7/04.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-12 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-12 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-4, and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 4436862 Tetenbaum et al..

Tetenbaum discloses a powdered thickener at the abstract; column 12, lines 48-68; column 20, lines 50-59; and the remainder of the document.

The applicant has not shown this powdered thickener to be different from that of the instant claims. It is noted that c and d are optional and therefore not required. It is clear that the clay of the patentee falls within the scope of b of the instant claims. It is not seen that the process makes a different product.

Applicant's arguments regarding carrier are noted but such "carriers" are not required by the instant claims. Urea is not required by the instant claims. The instant claims do not recite any particle size. There is no showing that the patentee's thickener does not have the argued improved dispersibility nor any showing comparing the instantly claimed thickener and that of the patentee to

demonstrate any such argued improvement. The applicant's argument that Tetenbaum does not disclose all of the elements of the above claims is noted. It is defective in that it fails to show that Tetenbaum does not disclose the instantly claimed powdered thickener for the reasons stated above. This rejection is therefore maintained.

4. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 4436862 Tetenbaum et al. in view of US Pat. No. 5913972 Kanou et al. and US Pat. No. 3896073 Smith.

Tetenbaum discloses a powdered thickener at the abstract; column 12, lines 48-68; column 20, lines 50-59; and the remainder of the document. It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the referenced insoluble clays (i.e. slurried clays) having the particle size of the instant claim 2 because such clays would have been expected to disperse in water more easily because of their increased surface areas. It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the additional compounds of the instant claims 5-9 in the thickener compositions of the instant claims because Tetenbaum encompasses the use of additional ingredients in their thickeners, as evidenced by examples 10-14 and the instantly claimed ingredients are well known coating composition additives as shown by Smith, column 11, lines 28-55 and column 22, lines 33-66 and Kanou et al., column 6, lines 57-62. These compounds would have contributed their well known properties to the final composition in which they are used.

The above rejection meets all of the parameters for an obviousness rejection.

The expectation for success lies within the cited art and within the fact that the components stated to be obvious are disclosed as being used in coating compositions. No reason is seen to expect that they would not function in the above discussed compositions.

The applicant has not shown this powdered thickener to be different from that of the instant claims. It is noted that c and d are optional and therefore not required. It is clear that the clay of the patentee falls within the scope of b of the instant claims. It is not seen that the process makes a different product.

Applicant's arguments regarding carrier are noted but such "carriers" are not required by the instant claims. Urea is not required by the instant claims. The instant claims do not recite any particle size. There is no showing that the patentee's thickener does not have the argued improved dispersibility nor any showing comparing the instantly claimed thickener and that of the patentee to demonstrate any such argued improvement. The applicant's argument that Tetenbaum does not disclose all of the elements of the above claims is noted. It is defective in that it fails to show that Tetenbaum does not disclose the instantly claimed powdered thickener for the reasons stated above. This rejection is therefore maintained.

**5. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is

filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick D. Niland whose telephone number is 571-272-1121. The examiner can normally be reached on Monday to Friday from 10am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

pn

July 11, 2004



Patrick Niland  
Primary Examiner  
Art Unit 1714